

Honorable Robert S. Lasnik

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

QOTD FILM INVESTMENT LTD.)	Case No.: 2:16-cv-00371-RSL
)	
Plaintiff,)	BRIAN WILSON'S COUNTERCLAIM
vs.)	
)	Count 1 – Declaratory Judgment under the
BRIAN WILSON)	Single Satisfaction Rule
)	
Defendants)	Count 2 – Violation of Washington Consumer
)	Protection Act
_____)	
BRIAN WILSON)	
Counterclaimant)	
)	
vs.)	
)	
QOTD FILM INVESTMENT LTD.)	
Cross Defendant)	
)	
)	
_____)	

COMES NOW, the Defendant, BRIAN WILSON (“Defendant”, “Counterclaimant” or “Wilson”), by and through its counsel of record, hereby counterclaims against Plaintiff QOTD FILM INVESTMENT LTD. (“QOTD” or Plaintiff”) on the Second Amended Complaint (“SAC”):

WILSON’S COUNTERCLAIM

Causes of Action – Count 1 – Declaratory Relief

Failure to State a Claim Due to Prior Full Satisfaction by Prior Judgment

1. QOTD has sought to litigate numerous copyright actions regarding its film “Queen of the Desert”. It is estimated that over 1,000 Defendants have been sued regarding this film regarding the alleged sharing of a single file using a Bittorent HASH with an identifier:

896B438F8D8F7C433F4B88A24322B8763A3E9885

On good faith and belief, these cases are as follows:

Party	Dist	Case #	Open	Close	# Def
QOTD Film Investment Limited (pla)	azdce	2:2016-cv-00407	820	2/12/2016 7/8/2016	30
QOTD Film Investment Limited (pla)	azdce	2:2016-cv-01021	820	4/12/2016 7/15/2016	26
QOTD Film Investment Ltd (pla)	nvdce	2:2016-cv-00928	820	4/24/2016	30
QOTD Film Investment Ltd (pla)	nvdce	2:2016-cv-00929	820	4/24/2016 6/29/2016	37
QOTD Film Investment LTD. (pla)	casdce	3:2016-cv-00749	820	3/30/2016 10/4/2016	399
QOTD Film Investment LTD. (pla)	casdce	3:2016-cv-00756	820	3/31/2016	69
QOTD Film Investment LTD. (pla)	casdce	3:2016-cv-00759	820	3/31/2016	121
QOTD Film Investment LTD. (pla)	casdce	3:2016-cv-00773	820	4/1/2016 9/27/2016	82
QOTD Film Investment LTD. (pla)	casdce	3:2016-cv-00926	820	4/18/2016	6
QOTD Film Investment Ltd. (pla)	codce	1:2016-cv-01260	820	5/25/2016 9/12/2016	12
QOTD Film Investment Ltd. (pla)	codce	1:2016-cv-01300	820	5/27/2016 9/22/2016	12
QOTD Film Investment Ltd. (pla)	codce	1:2016-cv-01366	820	6/7/2016 9/12/2016	25
QOTD Film Investment LTD. (pla)	flmdce	8:2016-cv-00628	820	3/16/2016 8/12/2016	1
QOTD Film Investment LTD. (pla)	flmdce	8:2016-cv-00627	820	3/16/2016 8/1/2016	1
QOTD Film Investment LTD. (pla)	flmdce	8:2016-cv-00629	820	3/16/2016 8/30/2016	1
QOTD Film Investment LTD. (pla)	flmdce	8:2016-cv-00631	820	3/16/2016 11/1/2016	1
QOTD Film Investment LTD. (pla)	flmdce	8:2016-cv-00630	820	3/16/2016 7/5/2016	1
QOTD Film Investment LTD. (pla)	flmdce	6:2016-cv-00453	820	3/17/2016 6/22/2016	1
QOTD Film Investment LTD. (pla)	ilndce	1:2016-cv-02457	820	2/22/2016 10/25/2016	33
QOTD Film Investment LTD. (pla)	ilndce	1:2016-cv-02458	820	2/22/2016 11/3/2016	24
QOTD Film Investment Ltd. (pla)	ilndce	1:2016-cv-02461	820	2/22/2016 8/2/2016	14
QOTD Film Investment Ltd. (pla)	ilndce	1:2016-cv-02462	820	2/22/2016 12/2/2016	28
QOTD Film Investment Ltd. (pla)	ilndce	1:2016-cv-02464	820	2/22/2016 6/22/2016	15
QOTD Film Investment LTD. (pla)	ilndce	1:2016-cv-02466	820	2/22/2016 10/20/2016	17
QOTD Film Investment Ltd. (pla)	nyedce	1:2016-cv-00925	820	2/24/2016 9/9/2016	10
QOTD Film Investment Ltd. (pla)	nysdce	1:2016-cv-01902	820	3/14/2016 9/7/2016	7
QOTD Film Investment Ltd. (pla)	ordce	3:2016-cv-00246	820	2/10/2016 6/21/2016	7
QOTD Film Investment Ltd. (pla)	ordce	3:2016-cv-00523	820	3/27/2016 7/13/2016	1
QOTD Film Investment Ltd. (pla)	ordce	3:2016-cv-00524	820	3/27/2016 8/29/2016	1

WILSON’S COUNTERCLAIM

30	QOTD Film Investment Ltd. (pla)	ordce	3:2016-cv-00525	820	3/27/2016	1
31	QOTD Film Investment Ltd. (pla)	ordce	3:2016-cv-00715	820	4/26/2016	1
32	QOTD Film Investment Ltd. (pla)	ordce	3:2016-cv-00927	820	5/26/2016	1
33	QOTD Film Investment Ltd. (pla)	ordce	3:2016-cv-00930	820	5/26/2016 11/22/2016	1
34	QOTD Film Investment Ltd. (pla)	ordce	3:2016-cv-01081	820	6/14/2016	1
35	QOTD Film Investment Ltd. (pla)	ordce	3:2016-cv-01408	820	7/11/2016 10/26/2016	1
36	QOTD Film Investment Ltd. (pla)	ordce	3:2016-cv-01628	820	8/12/2016 11/28/2016	1
37	QOTD Film Investment Ltd. (cd)	wawdce	2:2016-cv-00371	820	3/11/2016	14
39	QOTD Film Investment, Ltd (pla)	laedce	2:2016-cv-02588	820	3/30/2016 9/27/2016	1
40	QOTD Film Investment, Ltd (pla)	laedce	2:2016-cv-02803	820	4/5/2016	1
41	QOTD Film Investment, Ltd (pla)	miedce	2:2016-cv-11274	820	4/7/2016 9/14/2016	21
42	QOTD Film Investment, Ltd (pla)	miedce	2:2016-cv-11275	820	4/7/2016 9/14/2016	18
43	QOTD Film Investment, Ltd. (pla)	hidce	1:2016-cv-00189	820	4/22/2016 9/6/2016	9
Total:						1053

2. According to PACER, defendants have fully satisfied the judgment for this particular BITTORRENT HASH. These are:

a. In the United States District Court for the Eastern District of Louisiana, in the matter of QOTD FILM INVESTMENT, LTD vs. DOE 71.81.49.137, No. 16-2588 (E.D. LA) in which the Defendant paid QOTD \$ 10,000.00 and the case was dismissed with prejudice.

b. In the United States District Court for the District of Oregon, in the matter of CRIMINAL PRODUCTIONS, INC., et. al vs. MARK T FERGUSON, No. 16-01628 (D. OR) in which the Defendant paid QOTD \$ 2,000.00 and the case was dismissed with prejudice.

3. It is unknown at this time what other sums were paid by the 1053 defendants in this Bittorrent hash with the understanding that the claim was fully satisfied and the litigation could not be relitigated.

4. Plaintiff was well aware, a long time ago, that the actual and statutory damages for this particular bittorrent hash were satisfied under the “single satisfaction rule”. 17 U.S.C 504; *Arista Records LLC v. Lime Group LLC*, 784 F. Supp. 2d 313 (S.D.N.Y. 2011).

5. Plaintiff also failed to join all downstream bittorrent infringers for a single bittorrent hash is required in this Circuit under *Friedman v. Live Nation Merch., Inc.* 14-55302 (9th Cir., 2016).

1 6. Plaintiffs failure to join and complete satisfaction of all actual and statutory damages is a
2 complete bar to a claim for copyright infringement in this action.

3
4 **Causes of Action – Count 2 – Violation of Washington Consumer Protection Act**
5 **Suit for Damages after Full Satisfaction of Judgment**

6
7 7. Paragraphs are incorporated and realleged by reference.

8 8. As noted above, Plaintiff's claim for infringement on this Bittorrent Hash has been
9 completely satisfied a long time ago.

10
11 9. Despite this, Plaintiff continued to pursue additional damages awards for the same
12 bittorrent hash.

13 10. Also, Plaintiff knew via the allegedly accurate "bittorrent monitoring system", the IP
14 addresses for all individuals associated with this "bittorrent swarm". Plaintiff was required to
15 join all parties in one matter. If a court did not have personal jurisdiction, then Plaintiff could
16 have sought coordination with Multi District Litigation.

17
18 11. Instead, Plaintiff piecemealed this litigation across multiple districts with local attorneys
19 in those districts with the intent of recovering multiple times.

20 12. This "double" or "triple" dipping on the same bittorrent hash, is not allowable under the
21 Copyright Act, and is therefore a clear violation of statute under the Washington's Consumer
22 Protection Act, RCW 19.86. Plaintiff has knowingly violated the five "Hangman" factors, see
23 *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 719 P.2d 531
(Wash., 1986):

24 (a) Plaintiff's engaged in an unfair practice by bringing multiple suits on the same
25 bittorrent hash even after fall satisfaction of the claim;

1 (b) This occurred via the distribution of Plaintiff's movie in trade and commerce over the
internet

2 (c) This practice clearly affects the public interest insofar that over 1,000 putative
3 defendants (minus the one that paid up) were improperly sued;

4 (d) This practice has resulted in inequitable disgorgement of settlement monies beyond
5 those of the first settlement;

6 (e) Plaintiff, itself and/or through its agent, has caused this damage.

7
8 13. This claim under RCW 19.86 is also suitable for class certification under FRCP 23:

9 (a) The class members exceed 1,000 individuals;

10 (b) The issue of the single satisfaction rule is common to all class members;

11 (c) It is likely that the Plaintiff will assert a common claim and/or defense;

12 (d) Wilson is the most suitable class representative as he has an active matter with this
Court.

13
14 **DEFENDANT'S PRAYER FOR RELIEF**

15 Wilson respectfully prays that judgment entered as follows on counter-claim for declaratory
16 judgment (Count 1):

17 A. Plaintiff's claims for infringement be denied in their entirety and take nothing in view
18 of the prior satisfaction of the judgment;

19 B. Wilson is the prevailing party under the Copyright Act due to the clear material
alteration in the relationship of the parties

20 C. Wilson be entitled to statutory attorney fees under the Copyright Act;

21 D. Wilson be entitled to costs of suit; and

22 E. Wilson be entitled to any other relief that this Court may allow.
23
24
25
26

Wilson also respectfully prays that judgment entered as follows on the cross claims under R.C.W 19.86:

- F. QOTD has engaged in an unfair or deceptive act under RCW 19.86 by collecting multiple recoveries on the same bittorrent hash;
- G. QOTD improper suit against Wilson has caused harm, *inter alia*, hiring an attorney to analyze this claim and to analyze all claims related to this Bittorrent hash;
- H. That Wilson be named class representative under FRCP 23;
- I. Wilson is entitled to all relief as entitled under RCW 19.86.030, including, but not limited to actual damages, treble damages, and attorney fees.

Respectfully submitted,

Dated: January 1, 2017

/s/ J. Curtis Edmondson
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CERTIFICATE OF SERVICE

I hereby certify that I served the attached BRIAN WILSON'S COUNTERCLAIM on the following person(s) on the date indicated below:

David Allen Lowe
Lowe Graham jones
701 5th Ave., Suite 4800
Seattle, WA 98104-7009

by notice of electronic filing using the CM/ECF system

/s/ J. Curtis Edmondson
DATED: January 1, 2017

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